89-799

No.

FILED
NOV 20 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

October Term, 1989

IN THE MATTER

OF

GEORGE T. MAHSHIE, an Attorney,

Petitioner,

against

GRIEVANCE COMMITTEE OF THE FIFTH JUDICIAL DISTRICT, STATE OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION FOURTH JUDICIAL DEPARTMENT OF THE STATE OF NEW YORK

PETITION FOR WRIT OF CERTIORARI

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THE REPORTER COMPANY, INC., Walton, NY 13856—800 252-7181—1989
(3511)

30 pp

Question Presented

Whether the petitioner was denied due process of law when after the petitioner waived an evidentiary hearing, the Court relied on facts not contained in petitioner's plea of guilty to disbar him, then denied petitioner the opportunity to contest those facts?

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No. ____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989.

IN THE MATTER

OF

GEORGE T. MAHSHIE, an Attorney,

Petitioner,

vs.

GRIEVANCE COMMITTEE OF THE FIFTH JUDICIAL DISTRICT, STATE OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT OF THE STATE OF NEW YORK

PETITION FOR A WRIT OF CERTIORARI

George T. Mahshie, requests that a Writ of Certiorari be issued to review the Order and Opinion of the New York Appellate Division, Fourth Judicial Department, entered February 3, 1989, which disbarred him as an attorney, and the Order of that same Court entered June 2, 1989, which denied his motion to vacate the Order of Disbarment, and schedule a Hearing, on which the New York State Court of Appeals *sua sponte* dismissed his Notice of Appeal to that Court by Order entered September 21, 1989.

Opinion Below

The opinion of the Appellate Division, Fourth Judicial Department is not as yet officially reported (____ A.D.2d ____ (1989)). It is reproduced in the Appendix to this Petition beginning at App. p. A-1. The Order of Disbarment is reproduced in the Appendix to this Petition beginning at App. p. B-1.

A timely application to vacate the Order of Disbarment and schedule a Hearing was denied by the Appellate Division, Fourth Judicial Department on June 2, 1989. That Order is not as yet officially reported (____ A.D.2d ____ (1989)), and is reproduced in the Appendix to this Petition beginning at App. p. C-1.

A timely Notice of Appeal to the New York Court of Appeals was dismissed *sua sponte* on September 21, 1989. It is officially reported at 74 N.Y.2d 842 (1989), and the Order is reproduced in the Appendix to this Petition beginning at App. p. D-1.

Jurisdiction

The judgment of the New York Appellate Division, Fourth Judicial Department disbarring petitioner was

entered on February 3, 1989. A timely application to vacate the Order of Disbarment and schedule a Hearing was denied on June 2, 1989. A timely Notice of Appeal to the New York Court of Appeals was dismissed *sua sponte* on September 21, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

Constitutional and Statutory Provisions Involved

1. The Fourteenth Amendment to the United States Constitution provides in relevant part ". . . nor shall any state deprive any person of life, liberty or property without due process of law. . ."

2. New York State Judiciary Law §90 provides in relevant part: 4(d) that a serious crime is any Federal Felony which is not a New York State Felony; 4(f) that any attorney convicted of a serious crime shall be suspended until a final Order is made by the Appellate Division; 4(g) that once the conviction becomes final the attorney shall show cause why a final disciplinary Order should not be made; and 4 (h) that if the attorney requests a hearing one shall be held.

Statement of the Case

The petitioner, George T. Mahshie, entered into a plea bargain agreement,[1] and entered a plea of guilty to Conspiracy to Commit Offense or to Defraud United States in violation of Title 18 U.S.C. §371[2] in United States District Court for the Northern District of New York, and was sentenced on September 16, 1988.

---

[1]The Plea Agreement is reproduced in the Appendix to this Petition beginning at App. p. E-1.

[2]The Indictment charge is reproduced in the Appendix to this Petition beginning at App. p. F-1.

In accordance with Judiciary Law §90 (4) (d), since the aforementioned plea was not a State Felony, a determination would be made by the Appellate Division, Fourth Judicial Department if the Federal conviction constitutes grounds for removal.

There was also pending before respondent a Complaint involving the claim that petitioner had prepared and filed a fraudulent Mechanics Lien.

Subsequently, these matters were submitted to the Appellate Division, Fourth Judicial Department. Petitioner admitted the Federal conviction, set forth extenuating circumstances, and set forth facts regarding the alleged fraudulent Mechanics Lien. An evidentiary hearing was not requested by petitioner.

The Appellate Division, Fourth Judicial Department found that by his plea of guilty, petitioner admitted that, *inter alia*, "... he did 'counsel and coach' his coconspirators to provide false information ...", and that he unethically filed a fraudulent Notice of Mechanic's Lien which falsely claimed that work, labor and services had been performed by a previously dissolved corporation (Appendix A). Petitioner was disbarred (Appendix B).

However, the allegation, "counsel and coach" was not contained in petitioner's plea agreement, but obviously specifically omitted therefrom.[3] Therefore, petitioner timely moved to vacate the Order of Disbarment, and for a hearing to show the full factual basis of his plea of guilty to the Federal Felony. Petitioner's application was thereafter denied (Appendix C). The New York Court of Appeals *sua sponte* dismissed petitioner's Notice of Appeal to that Court (Appendix D).

[3]Compare Plea Agreement (Appendix E) and Indictment charge (Appendix F).

Reasons for Granting the Writ

It cannot be disputed that "the requirements of procedural due process must be met before a state can exclude a person from practicing law *(Willner v. Committee on Character,* 373 U.S. 96, 102 (1963); see also, *Schware v. Board of Bar Examiners,* 353 U.S. 232, 238-239 (1957)).

Furthermore, the requirement of due process embodies fair notice as to the precise nature of the charge against petitioner (see *In re Ruffalo* 390 U.S. 544, 552 (1968)).

Since the Federal Felony that petitioner pled guilty to was not a Felony in New York State, it was necessary for the Appellate Division to consider the punishment to be imposed upon him for the serious offense (Judiciary Law §90(4)(g)).

Petitioner admitted, in the Appellate Division, his conviction of the Federal Felony. His plea agreement (Appendix E) was before the Appellate Division. Petitioner did not request the Hearing that he was entitled to in accordance with Judiciary Law §90(4)(h).[4]

In disbarring petitioner, the Appellate Division, however, found that petitioner had by his plea of guilty admitted, *inter alia:*

> ". . . that he did 'counsel and coach' his coconspirators to provide false information to the Immigration and Naturalization Service . . ." (Appendix A).

---

[4]Nor was there any reason for petitioner to believe that it was necessary to raise the issue as to what he specifically pled guilty to by way of mitigation.

It should be noted that the aforementioned phrase had been contained in the count of the Indictment (Appendix F), to which petitioner had entered a plea of guilty. However, that phrase had been specifically omitted from the facts that petitioner admitted in his plea agreement (Appendix E).

As such, petitioner was not properly appraised of the precise nature of the charge against him when he waived a Hearing in regard to the allegation that he committed a serious offense by pleading guilty to the Federal Felony (see *In re Ruffalo, supra).* Had petitioner known that the Appellate Division would consider facts not admitted by him but rather simply charges against him, he would have requested a Hearing to demonstrate to the Appellate Division the true factual basis of the Federal Felony. Moreover, petitioner's timely effort to correct this factual misconception was denied (see Appendix C).

Petitioner's disbarment is, therefore, based on a factual finding that he admitted to facts ("counsel and coach") that he did not in fact admit to.[5] An analysis should have been undertaken as to whether the admitted facts, regarding the Federal Felony, together with the other findings constitute a sufficient basis for the Appellate Division to determine if petitioner committed serious professional misconduct to warrant his disbarment (see *Disciplinary Proceedings of Phelps,* 637 F.2d 171 (10th Cir. 1981)—the charge that defendant had been deprived of due process concerning notice was properly not considered by the Court in its analysis to disbar).

---

[5]Compare Opinion (Appendix A) and Plea Agreement (Appendix E).

CONCLUSION

For the reasons above stated, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JOHN A. CIRANDO, ESQ.
D.J. & J.A. CIRANDO, ESQS.
410 State Tower Building
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(315) 474-1285

Attorney for Petitioner

APPENDIX A.

Opinion of Appellate Division, Fourth Department.

IN THE MATTER

OF

GEORGE T. MAHSHIE, an Attorney,

Respondent,

GRIEVANCE COMMITTEE OF THE FIFTH JUDICIAL DISTRICT,

Petitioner.

Per Curiam Opinion

Revised February 22, 1989

In the Matter of George T. Mahshie, an attorney, Respondent. Grievance Committee of the Fifth Judicial District, Petitioner. Order of disbarment entered. *Per Curiam* Opinion: Respondent was admitted to practice by this court on March 14, 1956. On September 16, 1988 a judgment was entered in the United States District Court for the Northern District of New York, convicting respondent upon his plea of guilty to one count of a six-count indictment. By his plea of guilty, respondent admitted that, for the purpose of obtaining permanent resident alien status for Haikel Abughoush, he conspired with Abughoush and Magdalena Rodriguez to conceal from the United States Immigration and Naturalization Service that the marriage between

Abughoush and Rodriguez was a sham, and that he did "counsel and coach" his coconspirators to provide false information to the Immigration and Naturalization Service, all in violation of 18 USC § 371. Upon receipt on October 14, 1988 of a certified copy of the judgment of conviction, we determined that respondent was convicted of a serious crime and we suspended him from the practice of law (*see*, Judiciary Law § 90 [4] [f]).

Thereafter, the Grievance Committee of the Fifth Judicial District filed a petition dated November 1, 1988, which charged respondent with violations of the Code of Professional Responsibility. The petition originally contained two counts but the first count was subsequently withdrawn by the Committee.

The second count of the petition charges respondent with unethical conduct in drafting and filing a fraudulent notice of mechanic's lien, dated January 5, 1984, which falsely claimed that work, labor and services had been performed in 1983 and 1984 by M.P.R. Construction Corporation, Inc., which corporation had previously been dissolved by proclamation of the New York Department of State on March 31, 1982. It further charges that a law clerk who was employed in respondent's law office was directed by respondent to forge the signature of a former corporate officer on the notice of lien, and that respondent thereafter attested to the validity of the forged signature by affixing his own signature as a notary public.

Respondent admits the material allegations of the second count of the petition. He appeared before the court on December 6, 1988 and asserted that there are no significant issues of fact requiring a hearing. He urged the court to impose appropriate discipline based upon the record of the federal criminal proceeding, the admitted allegations of the petition, and the material submitted in mitigation. On consideration thereof, we find that respondent violated Canons 1 and 7 of the Code of Professional Responsibility. He

engaged in illegal conduct involving moral turpitude (DR 1-102 [A] [3]); he engaged in conduct involving dishonesty, fraud, deceit and misrepresentation (DR 1-102 [A] [4]); he engaged in conduct that is prejudicial to the administration of justice (DR 1-102A [5]); and in representing a client he knowingly and unlawfully used false evidence (DR 7-102 [A] [4]; DR 7-102 [A] [8]).

We conclude that respondent is guilty of serious professional misconduct and, accordingly, he should be disbarred.

Dillon, P.J., Callahan, Doerr, Denman, Boomer, JJ., concur.

APPENDIX B.

Order of Disbarment.

NEW YORK SUPREME COURT

APELLATE DIVISION, FOURTH DEPARTMENT

Present:

Dillon, P.J., Callahan, Doerr, Denman, Boomer

IN THE MATTER

OF

GEORGE T. MAHSHIE, an Attorney,

Respondent,

GRIEVANCE COMMITTEE OF THE FIFTH JUDICIAL DISTRICT,

Petitioner.

This court by order entered October 18, 1988 having suspended the above named George T. Mahshie from the practice of his profession as an attorney and counselor at law until the further order of this court pursuant to Judiciary Law § 90 (4)(f) and by order entered October 18, 1988 having directed George T. Mahshie to show cause why a final order should not be made pursuant to Judiciary Law

§ 90(4)(g) and the Grievance Committee of the Fifth Judicial District having filed a petition charging the respondent with professional misconduct,

Now, upon reading and filing the petition of the Grievance Committee of the Fifth Judicial District verified by David E. Brennan on November 1, 1988, the exhibits annexed thereto, the answer of respondent verified by George T. Mahshie on November 23, 1988, the exhibits annexed thereto and after hearing William F. Lynn, of counsel for the Respondent, Paul J. Ginnelly, of counsel for the Petitioner and George T. Mahshie, the respondent and due deliberation having been had thereon,

This Court hereby finds that the respondent is guilty of professional misconduct; and

It is hereby ORDERED, That the said George T. Mahshie, who was admitted to practice as an attorney and counselor at law by this court as George Towfick Mahshie on March 14, 1956 be, and he hereby is removed from his office as an attorney and counselor at law, and his name is hereby ordered stricken from the roll of attorneys and counselors at law in the State of New York, and the said George T. Mahshie is hereby commanded hereafter to desist and refrain from the practice of law in any form, either as principal or agent, clerk or employee of another, and is hereby forbidden to appear as an attorney and counselor at law before any court, judge, justice, board, commission or other public authority, or to give to another an opinion as to the law or its application, or any advice in relation thereto.

Per Curiam Opinion which is hereby made a part hereof.

Entered: February 3, 1989

CARMEN S. LEONE, Clerk

APPENDIX C.

Order, Entered June 2, 1989.

NEW YORK SUPREME COURT

APPELLATE DIVISION, FOURTH DEPARTMENT

Present:

Dillon, P. J., Callahan, Doerr, Denman, Green, JJ.

IN THE MATTER

OF

GEORGE T. MAHSHIE,

Respondent,

GRIEVANCE COMMITTEE OF THE FIFTH JUDICIAL DISTRICT,

Petitioner.

A motion having been made on behalf of the respondent for an order vacating the order of this Court entered February 22, 1989, and for other relief,

Now, upon reading and filing the affidavit of George T. Mahshie, sworn to March 23, 1989, the exhibits annexed thereto, the notice of said motion with, proof of service thereof, the opposing affidavit of Paul J. Ginnelly, sworn to

May 11, 1989, the exhibits annexed thereto, and after hearing William F. Lynn, of counsel for the respondent, George T. Mahshie, the respondent, and Paul J. Ginnelly, of counsel for the petitioner, and due deliberation having been had thereon,

It is hereby ORDERED, That said motion be and the same hereby is denied.

Entered: June 2, 1989

CARMEN S. LEONE, Clerk

APPENDIX D.

Order of Court of Appeals, State of New York, Dated September 21, 1989.

COURT OF APPEALS,

STATE OF NEW YORK

At a session of the Court, held at Court of Appeals Hall in, the City of Albany on the twenty-first day of September A. D. 1989

Present,

Hon. Sol Wachtler, Chief Judge, presiding.

IN THE MATTER

OF

GEORGE T. MAHSHIE,

Appellant,

v.

GRIEVANCE COMMITTEE OF THE FIFTH JUDICIAL DISTRICT,

Respondent.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court *sua sponte*, upon the ground that the order appealed from does not finally determine the proceeding within the meaning of the Constitution.

DONALD M. SHERAW
Clerk of the Court

APPENDIX E.

Plea Agreement.

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

GEORGE T. MAHSHIE,

Defendant.

Criminal Action No.
88-CR-51
(HON. CON G. CHOLAKIS)

PLEA AGREEMENT IN A CRIMINAL PROCEEDING

The United States of America, by and through its attorney, Frederick J. Scullin, Jr., United States Attorney for the Northern District of New York (by Andrew T. Baxter, Assistant U.S. Attorney), and George T. Mahshie, the defendant herein (by Paul R. Shanahan, Esq., his attorney), hereby enter into the following agreement regarding the disposition of certain criminal charges now pending against George T. Mahshie, as hereinafter specified:

1. George T. Mahshie, by his signature hereto, expressly acknowledges his right to remain silent and expressly waives that right. George T. Mahshie further acknowledges his right to assistance of counsel, which he has obtained; said counsel by his signature hereto having witnessed and approved this Agreement.

2. In return for the consideration set forth in this Plea Agreement, George T. Mahshie agrees to enter a plea of guilty to Count IV of Indictment 88-CR-51, alleging a single violation of Title 18, United States Code, Section 371.

3. It is understood by George T. Mahshie that his guilty plea to Count IV of Indictment 88-CR-51 could subject him to a possible maximum penalty of five (5) years imprisonment, a $10,000 fine, or both. Pursuant to Title 18, United States Code, Section 3623, the Court could impose an alternate fine of either $250,000 or twice the pecuniary gain to the defendant or loss to any victims resulting from the offense. The sentencing Court could also require in accordance with Title 18, United States Code, Section 3579, that the defendant pay restitution to any victim of this offense. Finally, at the time of sentencing, defendant will be additionally required to pay an assessment of $50, pursuant to Title 18, United States Code, Section 3013. George T. Mahshie understands that, if his guilty plea is accepted by the Court, he can receive any sentence up to the maximum set forth herein. It is further understood by George T. Mahshie that the sentence to be imposed upon him is within the sole discretion of the Court and that this office makes no representation, express or implied, as to what sentence the Court will ultimately impose.

4. George T. Mahshie, admits and acknowledges the following:

a. That in 1984 and in 1985, he knew that an alien illegally in the United States or legally in the United States on a non-immigrant visa could be classified as a lawful permanent resident if he married a United States citizen and, among other procedures, the citizen spouse filed a Petition for an Immigrant Visa (Form I-130) on behalf of the alien with the Immigration and Naturalization Service of the United States ("INS");

b. That he also knew, in 1984 and 1985, that INS would not approve a Form I-130 petition and classify the alien as a lawful permanent resident if it were known that the alien's marriage had been entered into solely for the purpose of obtaining permanent resident status with the understanding that the alien and his or her spouse would not live together as husband and wife or otherwise maintain a marital relationship;

c. Between in or about April, 1984 and November, 1984, in the Northern District of New York and elsewhere, George T. Mahshie willfully and knowingly did conspire with Haikel Abughoush ("Abughoush") and Magdelina Rodriquez ("Rodriquez") to conceal and cover up material facts in connection with a Form I-130 filed on behalf of Abughoush—an alien—which stated that he was married to Rodriquez—a United States citizen—whereas, as George T. Mahshie then and there well knew, this marriage had been entered into solely for the purpose of obtaining status for Abughoush as permanent resident alien with the understanding that Abughoush and Rodriquez would not live together as husband and wife or otherwise maintain a marital relationship;

d. On or about April 4, 1984, Magdelina Rodriquez executed a Form I-130 on behalf of Haikel Abughoush which was filed with INS on or about June 19, 1984, with the knowledge George T. Mahshie.

5. George T. Mahshie acknowledges that, if he elected to go to trial, the United States could prove, beyond a reasonable doubt, all of the facts, set forth in this Plea Agreement and that those facts would support his a conviction on Count IV of Indictment 88-CR-51.

6. In exchange for the plea of guilty to Indictment 88-CR-51 by George T. Mahshie and for other considerations set forth in this Plea Agreement, the United States Attorney's Office for the Northern District of New York hereby agrees as follows:

a. That it will accept the plea of guilty by George T. Mahshie to Count IV in full satisfaction of all charges in Indictment 88-CR-51 and that it will dismiss the remaining counts in said Indictment at the time of sentencing;

b. That, for so long as the plea and sentence on Count IV of Indictment 88-CR-51 remain in effect, the United States Attorney for the Northern District of New York will not prosecute George T. Mahshie for criminal violations of the Internal Revenue Code in connection with returns that he filed for calendars years 1979 through 1984;

c. That it reserves the right to advise the Court and the Probation Office of any information of a factual nature relating to this case, to correct any factual misstatements relating to sentencing pro-

ceedings, and to oppose any application by defendant for reduction of sentence pursuant to Rule 35, Fed. R. Crim. P.;

d. That it reserves the right to take a position with respect to the appropriate sentence to be imposed by the Court.

7. This Agreement is made contingent upon the Court's accepting it at the time of the plea of guilty pursuant to Rule 11(e), Fed. R. Crim. P.

8. George T. Mahshie acknowledges that this Agreement is limited to the United States Attorney's Office for the Northern District of New York and cannot bind any other Federal, state, or local prosecuting authorities.

9. George T. Mahshie acknowledges that this Agreement was reached without regard to any civil or administrative matters that may be pending or may arise regarding George T. Mahshie including, but not limited to, proceedings by the Internal Revenue Service relating to potential civil tax liability.

10. It is expressly understood that this document contains the entire Plea Agreement and that no additional promises, agreements, or conditions have been entered into, other than those set forth in this Agreement and none will be entered into unless in writing and signed by all parties.

FREDERICK J. SCULLIN, JR.
United States Attorney
Northern District of New York
100 S. Clinton Street
Syracuse, New York 13260

Dated: June , 1988

By: ANDREW T. BAXTER
Assistant U.S. Attorney

Dated: June 15, 1988

S/GEORGE T. MAHSHIE
Defendant

APPROVED:

Dated: June 15, 1988

PAUL R. SHANAHAN, Esq.
Attorney for Defendant

APPENDIX F.

Indictment.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

GEORGE T. MAHSHIE,

Defendant.

Criminal Action No.
88-CR-51

VIO: 18 U.S.C. § 371
(1 Count)
18 U.S.C. §§ 1001 & 2
(2 Counts)
18 U.S.C. § 1503
(1 Count)
18 U.S.C. § 1505
(1 Count)
18 U.S.C. § 1512(b)(3)
(1 Count)

THE GRAND JURY CHARGES:

* * *

THE GRAND JURY FURTHER CHARGES:

COUNT IV

1. That at all times states herein, an alien illegally in the United States or legally in the United States on a non-immigrant visa could be classified as a lawful permanent resident if he married a United States citizen and, among other procedures, the citizen spouse filed a petition for a immigrant visa (Form I-130) on behalf of the alien with the Immigration and Naturalization Service of the United States.

2. That at all times stated herein, the Immigration and Naturalization Service would not approve the Form I-130 petition and classify the alien as a lawful permanent resident if it were known that the alien's marriage had been arranged solely for the purpose of obtaining permanent resident status with the understanding that the alien and his or her spouse would not live together as husband and wife or otherwise maintain a marital relationship.

3. Between in or about May, 1983, and April 18, 1985, in the Northern District of New York, and elsewhere,

GEORGE T. MAHSHIE,

willfully and knowingly did conspire, combine, confederate and agree with Haikel Abughoush (hereinafter "Abughoush"), Magdalena Rodriguez, also known as Magdalena Abughoush (hereinafter "Rodriguez"), and others to the Grand Jury unknown, to commit an offense against the United States, that is, to knowingly and willfully, in a matter within the Jurisdiction of the Immigration and Naturalization Service, an agency of the United States, conceal and cover up material facts in a Form I-130 filed on behalf of Abughoush—an alien—which stated that he was married to Rodriguez—a United States citizen—and resided

with her at 2716 East Colvin Street, Syracuse, New York, whereas, as George T. Mahshie then and there well knew, this marriage had been arranged solely for the purpose of obtaining status for Abughoush as a permanent resident alien with the understanding that Abughoush and Rodriguez would not live together as husband and wife or otherwise maintain a marital relationship, contrary to the provisions of Title 18, United States Code, Section 1001.

4. It was further part of this conspiracy that George T. Mahshie would counsel and coach Abughoush and Rodriguez to provide false information to the Immigration and Naturalization Service in an effort to conceal that their marriage was a sham entered into solely for the purpose of obtaining permanent resident alien status for Abughoush.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, George T. Mahshie and co-conspirators committed and caused to be committed the following Overt Acts:

1. In or about April 4, 1984, Magdalena Rodriguez executed a petition for an immigrant visa (Form I-130) on behalf of Haikel Abughoush.

2. On or about June 19, 1984, George T. Mahshie caused the above-described Form I-130 to be filed with the Immigration and Naturalization Service in Buffalo, New York.

All in violation of Title 18, United States Code, Section 371.

* * *

A TRUE BILL

MARY JANE FENNESSEY
FOREPERSON

FREDERICK J. SCULLIN, JR.
United States Attorney

By: Andrew T. Baxter
Assistant U.S. Attorney

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

MARCH 10, 1988

AT_____O'CLOCK ____M.
J.R. SCULLY, Clerk
SYRACUSE

FILED
DEC 22 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-799

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GEORGE T. MAHSHIE, an Attorney,

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION FOURTH JUDICIAL DEPARTMENT OF THE STATE OF NEW YORK

Respondent's Brief in Opposition to Petition for a Writ of Certiorari

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The Lawyers Cooperative Publishing Company, Inc., Rochester, NY 14694—800 252-7181—1989
(3615)

44 pp

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No. 89-799

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989.

IN THE MATTER

OF

GEORGE T. MAHSHIE, an Attorney,
Petitioner,

against

GRIEVANCE COMMITTEE OF THE FIFTH JUDICIAL DISTRICT, STATE OF NEW YORK,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FOURTH DEPARTMENT OF THE STATE OF NEW YORK

Respondent's Brief in Opposition to Petition for a Writ of Certiorari

Preliminary Statement

This brief is submitted in opposition to the petition for a Writ of Certiorari to review the order of the Supreme Court

of the State of New York, Appellate Division, Fourth Judicial Department, entered on February 3, 1989 which disbarred the Petitioner from practicing law in the State of New York.

Statement of the Case

The Petitioner pled guilty to a felony in the Northern District of New York District Court in providing false information to the Immigration and Naturalization Services in violation of 18 U.S.C. Section 371 (Appendix E). Thereafter, the Appellate Division, Fourth Department, on October 18, 1988 suspended Petitioner until further order of said Court pursuant to Judiciary Law §90(4)(f) and directed George T. Mahshie to show cause why a final order should not be made pursuant to §90(4)(f) of the Judiciary Law.

Subsequent to the Order of Suspension of the Fourth Department, Appellate Division, the Petitioner was served with a Petition (Appendix G) alleging a violation of the Code of Professional Responsibility in that he filed a fraudulent notice of a mechanic's lien and notarized the fraudulent signature of a corporate officer on a Notice of Lien. A court appearance before the Appellate Division, Fourth Department, was scheduled for December 6, 1988 on the plea to the federal felony and on the allegations set forth in the Petition.

The Petitioner admitted the material allegations as set forth in the Petition and asserted that there were no significant issues of fact requiring a hearing. The Petitioner, represented by counsel at the court appearance of December 6, 1988, waived his opportunity for a hearing and requested that the Fourth Department Appellate Division not forward this matter to a referee to conduct a hearing.

Based upon the Petitioner's plea of guilty to a felony and his admission to the violation of the Code of Professional

Responsibility, the Petitioner was disbarred by the Fourth Department Appellate Division on February 3, 1989.

The Petitioner made a motion to the Appellate Division, Fourth Department, to vacate the Disbarment Order and requested a hearing as to the charges filed against him which had previously been admitted by the Petitioner.

The Appellate Division, Fourth Department, denied Petitioner's motion on June 2, 1989 (Appendix C) and the Petitioner thereafter filed a Notice of Appeal to the New York State Court of Appeals. The Court of Appeals dismissed the appeal sua sponte on September 21, 1989 (Appendix D).

Reasons for Denying the Writ

The Petitioner was not denied due process in that he appeared before the Appellate Division, Fourth Department, on December 6, 1988 with counsel and having admitted the material allegations of the Petition, he advised the Court that a fact-finding hearing was not necessary, the Petitioner therefore waived a hearing on the allegations in the Petition. It is axiomatic that the Petitioner received due process in that he elected to waive a hearing.

The Petitioner pled guilty to Count IV of Indictment 81-CR-51 alleging a single violation of Title 18, United States Code, Section 371, in full satisfaction of all charges in the Indictment (Appendix F).

In the Petitioner's plea agreement, he acknowledged pleading guilty to one count in the indictment of his plea agreement as set forth in Appendix E. A review of Count IV of this indictment (Appendix F) indicates that there is the phrase that as part of this conspiracy, that he would counsel and coach Abughoush and Rodriguez to provide false information to the Immigration and Naturalization

Service in an effort to conceal that their marriage was a sham. There was no request that the presiding justice construe the wording of the plea agreement to exclude the phrase "coach and counsel" from Count IV of the indictment to which he pled. The use of the phrase by the Appellate Division in their opinion citing "coach and counsel" is not in error and also is not prejudicial (Appendix A).

The criminal conviction of a lawyer evidences the most egregious type of misconduct. Standing Committee on Discipline of *U.S. District Court v. Ross*, 735 F2d 1168, 1171 (CA9 1984) ("Lawyers who act illegally diminish the stature of the legal profession and reduce public confidence in the rule of law".). Such violations demonstrate a complete disregard of the law and the public welfare. See, e.g., In re Jones, 464 NE 2d 1281, 1282 (Ind 1984).

The Appellate Division is vested with wide discretion where misconduct is established and the nature and character of subsequent discipline is left to the Appellate Division's own evaluation of the particular facts placed before it.

It should be noted that the order of Disbarment Of the Fourth Department Appellate Division dated February 3, 1989 (Appendix B) refers to disciplinary rules violated by the Petitioner herein and all of those disciplinary rules cited are alleged in Second Allegation of the Petition to which the Petitioner admitted (Appendix G, p. 3).

The Appellate Division order of Disbarment was based on both the federal felony conviction and the Petition of the Fifth District Grievance Committee alleging serious violations of the Code of Professional Responsibility.

The issues which the Petitioner seeks to raise in this matter are factual matters which have been determined and are amply supported by the record. There are no questions of law which merit this Court granting a Writ of Certiorari.

Therefore, the Petitioner has failed to present any valid questions of law for this Court's review and no grounds for granting a Writ of Certiorari.

CONCLUSION

For the reason above Stated, the Petition for a Writ of Certorari should not be granted.

Respectfully submitted,

PAUL J. GINNELLY, ESQ.
Grievance Committee of the Fifth
Judicial District
State of New York
465 South Salina Street
Syracuse, NY 13202
(315) 471-1835

Attorney for Respondent

APPENDIX A.

Opinion of Appellate Division, Fourth Department.

IN THE MATTER

OF

GEORGE T. MAHSHIE, an Attorney,

Respondent,

GRIEVANCE COMMITTEE OF THE FIFTH JUDICIAL DISTRICT,

Petitioner.

Per Curiam Opinion

Revised February 22, 1989

In the Matter of George T. Mahshie, an attorney, Respondent. Grievance Committee of the Fifth Judicial District, Petitioner. Order of disbarment entered. *Per Curiam* Opinion: Respondent was admitted to practice by this court on March 14, 1956. On September 16, 1988 a judgment was entered in the United States District Court for the Northern District of New York, convicting respondent upon his plea of guilty to one count of a six-count indictment. By his plea of guilty, respondent admitted that, for the purpose of obtaining permanent resident alien status for Haikel Abughoush, he conspired with Abughoush and Magdalena Rodriguez to conceal from the United States Immigration and Naturalization Service that the marriage between

Abughoush and Rodriguez was a sham, and that he did "counsel and coach" his coconspirators to provide false information to the Immigration and Naturalization Service, all in violation of 18 USC § 371. Upon receipt on October 14, 1988 of a certified copy of the judgment of conviction, we determined that respondent was convicted of a serious crime and we suspended him from the practice of law (*see*, Judiciary Law § 90 [4] [f]).

Thereafter, the Grievance Committee of the Fifth Judicial District filed a petition dated November 1, 1988, which charged respondent with violations of the Code of Professional Responsibility. The petition originally contained two counts but the first count was subsequently withdrawn by the Committee.

The second count of the petition charges respondent with unethical conduct in drafting and filing a fraudulent notice of mechanic's lien, dated January 5, 1984, which falsely claimed that work, labor and services had been performed in 1983 and 1984 by M.P.R. Construction Corporation, Inc., which corporation had previously been dissolved by proclamation of the New York Department of State on March 31, 1982. It further charges that a law clerk who was employed in respondent's law office was directed by respondent to forge the signature of a former corporate officer on the notice of lien, and that respondent thereafter attested to the validity of the forged signature by affixing his own signature as a notary public.

Respondent admits the material allegations of the second count of the petition. He appeared before the court on December 6, 1988 and asserted that there are no significant issues of fact requiring a hearing. He urged the court to impose appropriate discipline based upon the record of the federal criminal proceeding, the admitted allegations of the petition, and the material submitted in mitigation. On consideration thereof, we find that respondent violated Canons 1 and 7 of the Code of Professional Responsibility. He

engaged in illegal conduct involving moral turpitude (DR 1-102 [A] [3]); he engaged in conduct involving dishonesty, fraud, deceit and misrepresentation (DR 1-102 [A] [4]); he engaged in conduct that is prejudicial to the administration of justice (DR 1-102A [5]); and in representing a client he knowingly and unlawfully used false evidence (DR 7-102 [A] [4]; DR 7-102 [A] [8]).

We conclude that respondent is guilty of serious professional misconduct and, accordingly, he should be disbarred.

Dillon, P.J., Callahan, Doerr, Denman, Boomer, JJ., concur.

APPENDIX B.

Order of Disbarment.

NEW YORK SUPREME COURT

APELLATE DIVISION, FOURTH DEPARTMENT

Present:

Dillon, P.J., Callahan, Doerr, Denman, Boomer

IN THE MATTER

OF

GEORGE T. MAHSHIE, an Attorney,

Respondent,

GRIEVANCE COMMITTEE OF THE FIFTH JUDICIAL DISTRICT,

Petitioner.

This court by order entered October 18, 1988 having suspended the above named George T. Mahshie from the practice of his profession as an attorney and counselor at law until the further order of this court pursuant to Judiciary Law § 90 (4)(f) and by order entered October 18, 1988 having directed George T. Mahshie to show cause why a final order should not be made pursuant to Judiciary Law

§ 90(4)(g) and the Grievance Committee of the Fifth Judicial District having filed a petition charging the respondent with professional misconduct,

Now, upon reading and filing the petition of the Grievance Committee of the Fifth Judicial District verified by David E. Brennan on November 1, 1988, the exhibits annexed thereto, the answer of respondent verified by George T. Mahshie on November 23, 1988, the exhibits annexed thereto and after hearing William F. Lynn, of counsel for the Respondent, Paul J. Ginnelly, of counsel for the Petitioner and George T. Mahshie, the respondent and due deliberation having been had thereon,

This Court hereby finds that the respondent is guilty of professional misconduct; and

It is hereby ORDERED, That the said George T. Mahshie, who was admitted to practice as an attorney and counselor at law by this court as George Towfick Mahshie on March 14, 1956 be, and he hereby is removed from his office as an attorney and counselor at law, and his name is hereby ordered stricken from the roll of attorneys and counselors at law in the State of New York, and the said George T. Mahshie is hereby commanded hereafter to desist and refrain from the practice of law in any form, either as principal or agent, clerk or employee of another, and is hereby forbidden to appear as an attorney and counselor at law before any court, judge, justice, board, commission or other public authority, or to give to another an opinion as to the law or its application, or any advice in relation thereto.

Per Curiam Opinion which is hereby made a part hereof.

Entered: February 3, 1989

CARMEN S. LEONE, Clerk

APPENDIX C.

Order, Entered June 2, 1989.

NEW YORK SUPREME COURT

APPELLATE DIVISION, FOURTH DEPARTMENT

Present:

Dillon, P. J., Callahan, Doerr, Denman, Green, JJ.

IN THE MATTER

OF

GEORGE T. MAHSHIE,

Respondent,

GRIEVANCE COMMITTEE OF THE FIFTH JUDICIAL DISTRICT,

Petitioner.

A motion having been made on behalf of the respondent for an order vacating the order of this Court entered February 22, 1989, and for other relief,

Now, upon reading and filing the affidavit of George T. Mahshie, sworn to March 23, 1989, the exhibits annexed thereto, the notice of said motion with, proof of service thereof, the opposing affidavit of Paul J. Ginnelly, sworn to

May 11, 1989, the exhibits annexed thereto, and after hearing William F. Lynn, of counsel for the respondent, George T. Mahshie, the respondent, and Paul J. Ginnelly, of counsel for the petitioner, and due deliberation having been had thereon,

It is hereby ORDERED, That said motion be and the same hereby is denied.

Entered: June 2, 1989

CARMEN S. LEONE, Clerk

APPENDIX D.

Order of Court of Appeals, State of New York, Dated September 21, 1989.

COURT OF APPEALS,

STATE OF NEW YORK

At a session of the Court, held at Court of Appeals Hall in, the City of Albany on the twenty-first day of September A. D. 1989

Present,

Hon. Sol Wachtler, Chief Judge, presiding.

IN THE MATTER

OF

GEORGE T. MAHSHIE,

Appellant,

v.

GRIEVANCE COMMITTEE OF THE FIFTH JUDICIAL DISTRICT,

Respondent.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court *sua sponte*, upon the ground that the order appealed from does not finally determine the proceeding within the meaning of the Constitution.

DONALD M. SHERAW
Clerk of the Court

APPENDIX E.

Plea Agreement.

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

GEORGE T. MAHSHIE,

Defendant.

Criminal Action No.
88-CR-51
(HON. CON G. CHOLAKIS)

PLEA AGREEMENT IN A CRIMINAL PROCEEDING

The United States of America, by and through its attorney, Frederick J. Scullin, Jr., United States Attorney for the Northern District of New York (by Andrew T. Baxter, Assistant U.S. Attorney), and George T. Mahshie, the defendant herein (by Paul R. Shanahan, Esq., his attorney), hereby enter into the following agreement regarding the disposition of certain criminal charges now pending against George T. Mahshie, as hereinafter specified:

1. George T. Mahshie, by his signature hereto, expressly acknowledges his right to remain silent and expressly waives that right. George T. Mahshie further acknowledges his right to assistance of counsel, which he has obtained; said counsel by his signature hereto having witnessed and approved this Agreement.

2. In return for the consideration set forth in this Plea Agreement, George T. Mahshie agrees to enter a plea of guilty to Count IV of Indictment 88-CR-51, alleging a single violation of Title 18, United States Code, Section 371.

3. It is understood by George T. Mahshie that his guilty plea to Count IV of Indictment 88-CR-51 could subject him to a possible maximum penalty of five (5) years imprisonment, a $10,000 fine, or both. Pursuant to Title 18, United States Code, Section 3623, the Court could impose an alternate fine of either $250,000 or twice the pecuniary gain to the defendant or loss to any victims resulting from the offense. The sentencing Court could also require in accordance with Title 18, United States Code, Section 3579, that the defendant pay restitution to any victim of this offense. Finally, at the time of sentencing, defendant will be additionally required to pay an assessment of $50, pursuant to Title 18, United States Code, Section 3013. George T. Mahshie understands that, if his guilty plea is accepted by the Court, he can receive any sentence up to the maximum set forth herein. It is further understood by George T. Mahshie that the sentence to be imposed upon him is within the sole discretion of the Court and that this office makes no representation, express or implied, as to what sentence the Court will ultimately impose.

4. George T. Mahshie, admits and acknowledges the following:

a. That in 1984 and in 1985, he knew that an alien illegally in the United States or legally in the United States on a non-immigrant visa could be classified as a lawful permanent resident if he married a United States citizen and, among other procedures, the citizen spouse filed a Petition for an Immigrant Visa (Form I-130) on behalf of the alien with the Immigration and Naturalization Service of the United States ("INS");

b. That he also knew, in 1984 and 1985, that INS would not approve a Form I-130 petition and classify the alien as a lawful permanent resident if it were known that the alien's marriage had been entered into solely for the purpose of obtaining permanent resident status with the understanding that the alien and his or her spouse would not live together as husband and wife or otherwise maintain a marital relationship;

c. Between in or about April, 1984 and November, 1984, in the Northern District of New York and elsewhere, George T. Mahshie willfully and knowingly did conspire with Haikel Abughoush ("Abughoush") and Magdelina Rodriquez ("Rodriquez") to conceal and cover up material facts in connection with a Form I-130 filed on behalf of Abughoush—an alien—which stated that he was married to Rodriquez—a United States citizen—whereas, as George T. Mahshie then and there well knew, this marriage had been entered into solely for the purpose of obtaining status for Abughoush as permanent resident alien with the understanding that Abughoush and Rodriquez would not live together as husband and wife or otherwise maintain a marital relationship;

d. On or about April 4, 1984, Magdelina Rodriquez executed a Form I-130 on behalf of Haikel Abughoush which was filed with INS on or about June 19, 1984, with the knowledge George T. Mahshie.

5. George T. Mahshie acknowledges that, if he elected to go to trial, the United States could prove, beyond a reasonable doubt, all of the facts, set forth in this Plea Agreement and that those facts would support his a conviction on Count IV of Indictment 88-CR-51.

6. In exchange for the plea of guilty to Indictment 88-CR-51 by George T. Mahshie and for other considerations set forth in this Plea Agreement, the United States Attorney's Office for the Northern District of New York hereby agrees as follows:

a. That it will accept the plea of guilty by George T. Mahshie to Count IV in full satisfaction of all charges in Indictment 88-CR-51 and that it will dismiss the remaining counts in said Indictment at the time of sentencing;

b. That, for so long as the plea and sentence on Count IV of Indictment 88-CR-51 remain in effect, the United States Attorney for the Northern District of New York will not prosecute George T. Mahshie for criminal violations of the Internal Revenue Code in connection with returns that he filed for calendars years 1979 through 1984;

c. That it reserves the right to advise the Court and the Probation Office of any information of a factual nature relating to this case, to correct any factual misstatements relating to sentencing pro-

ceedings, and to oppose any application by defendant for reduction of sentence pursuant to Rule 35, Fed. R. Crim. P.;

d. That it reserves the right to take a position with respect to the appropriate sentence to be imposed by the Court.

7. This Agreement is made contingent upon the Court's accepting it at the time of the plea of guilty pursuant to Rule 11(e), Fed. R. Crim. P.

8. George T. Mahshie acknowledges that this Agreement is limited to the United States Attorney's Office for the Northern District of New York and cannot bind any other Federal, state, or local prosecuting authorities.

9. George T. Mahshie acknowledges that this Agreement was reached without regard to any civil or administrative matters that may be pending or may arise regarding George T. Mahshie including, but not limited to, proceedings by the Internal Revenue Service relating to potential civil tax liability.

10. It is expressly understood that this document contains the entire Plea Agreement and that no additional promises, agreements, or conditions have been entered into, other than those set forth in this Agreement and none will be entered into unless in writing and signed by all parties.

FREDERICK J. SCULLIN, JR.
United States Attorney
Northern District of New York
100 S. Clinton Street
Syracuse, New York 13260

Dated: June , 1988

By: ANDREW T. BAXTER
Assistant U.S. Attorney

Dated: June 15, 1988

S/GEORGE T. MAHSHIE
Defendant

APPROVED:

Dated: June 15, 1988

PAUL K. SHANAHAN, Esq.
Attorney for Defendant

APPENDIX F.

Indictment.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

GEORGE T. MAHSHIE,

Defendant.

Criminal Action No.
88-CR-51

VIO: 18 U.S.C. § 371
(1 Count)
18 U.S.C. §§ 1001 & 2
(2 Counts)
18 U.S.C. § 1503
(1 Count)
18 U.S.C. § 1505
(1 Count)
18 U.S.C. § 1512(b)(3)
(1 Count)

THE GRAND JURY CHARGES:

* * *

THE GRAND JURY FURTHER CHARGES:

COUNT IV

1. That at all times states herein, an alien illegally in the United States or legally in the United States on a non-immigrant visa could be classified as a lawful permanent resident if he married a United States citizen and, among other procedures, the citizen spouse filed a petition for a immigrant visa (Form I-130) on behalf of the alien with the Immigration and Naturalization Service of the United States.

2. That at all times stated herein, the Immigration and Naturalization Service would not approve the Form I-130 petition and classify the alien as a lawful permanent resident if it were known that the alien's marriage had been arranged solely for the purpose of obtaining permanent resident status with the understanding that the alien and his or her spouse would not live together as husband and wife or otherwise maintain a marital relationship.

3. Between in or about May, 1983, and April 18, 1985, in the Northern District of New York, and elsewhere,

GEORGE T. MAHSHIE,

willfully and knowingly did conspire, combine, confederate and agree with Haikel Abughoush (hereinafter "Abughoush"), Magdalena Rodriguez, also known as Magdalena Abughoush (hereinafter "Rodriguez"), and others to the Grand Jury unknown, to commit an offense against the United States, that is, to knowingly and willfully, in a matter within the Jurisdiction of the Immigration and Naturalization Service, an agency of the United States, conceal and cover up material facts in a Form I-130 filed on behalf of Abughoush—an alien—which stated that he was married to Rodriguez—a United States citizen—and resided

with her at 2716 East Colvin Street, Syracuse, New York, whereas, as George T. Mahshie then and there well knew, this marriage had been arranged solely for the purpose of obtaining status for Abughoush as a permanent resident alien with the understanding that Abughoush and Rodriguez would not live together as husband and wife or otherwise maintain a marital relationship, contrary to the provisions of Title 18, United States Code, Section 1001.

4. It was further part of this conspiracy that George T. Mahshie would counsel and coach Abughoush and Rodriguez to provide false information to the Immigration and Naturalization Service in an effort to conceal that their marriage was a sham entered into solely for the purpose of obtaining permanent resident alien status for Abughoush.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, George T. Mahshie and co-conspirators committed and caused to be committed the following Overt Acts:

1. In or about April 4, 1984, Magdalena Rodriguez executed a petition for an immigrant visa (Form I-130) on behalf of Haikel Abughoush.

2. On or about June 19, 1984, George T. Mahshie caused the above-described Form I-130 to be filed with the Immigration and Naturalization Service in Buffalo, New York.

All in violation of Title 18, United States Code, Section 371.

* * *

F-4

A TRUE BILL

MARY JANE FENNESSEY
FOREPERSON

FREDERICK J. SCULLIN, JR.
United States Attorney

By: Andrew T. Baxter
Assistant U.S. Attorney

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

MARCH 10, 1988

AT_____O'CLOCK ____M.
J.R. SCULLY, Clerk
SYRACUSE

APPENDIX G—Petition

State of New York Supreme Court

APPELLATE DIVISION FOURTH DEPARTMENT

GRIEVANCE COMMITTEE OF THE FIFTH JUDICIAL DISTRICT

Petitioner

vs.

GEORGE T. MAHSHIE, ESQ.

Respondent

PETITION

To The Honorable

Appellate Division, Supreme Court, for the Fourth Judicial Department:

The Petition of the Grievance Committee of the Fifth Judicial District respectfully shows, upon information and belief:

FIRST: Your Petitioner is a Grievance Committee of attorneys and counselors at law of the Supreme Court of the State of New York and lay persons, duly organized and existing under and pursuant to Rule 22 NYCRR 1022.19 of the State of New York.

SECOND: That GEORGE T. MAHSHIE, ESQ. hereinafter referred to as the Respondent, was and still is an attorney and counselor at law licensed to practice as such by Order of the Appellate Division, Fourth Department, State of New York on March 14, 1956. The Respondent has been temporarily suspended from the practice of law by Order of the Appellate Division, Fourth Department on October 18, 1988.

THIRD: That the Respondent had maintained an office for the practice of law in the County of Onondaga at 731 James Street, Syracuse, New York.

FIRST ALLEGATION

FOURTH: That the Respondent, Mr. Mahshie, represented one William J. Ryan in the incorporation of a business known as M.P.R. Construction Corporation, Inc. which was incorporated in 1968. The M.P.R. Construction Corporation, Inc. was a construction firm specializing in brick and stone masonry doing construction work in the Central New York area. The officers of the company in November, 1972 were George T. Mahshie, President, William J. Ryan, Vice President and Catherine Bowka, Secretary, who was also a secretary in the law office of Mr. Mahshie (Exhibit 1).

FIFTH: That Mr. Ryan testified on January 9, 1985 before a Federal Grand Jury in the investigation of George T. Mahshie that M.P.R. Construction Corporation, Inc.'s last construction contract in New York State was in 1974/1975.

SIXTH: That Mr. Ryan testified that by 1978 or 1979, M.P.R. Construction Corporation, Inc. was not supposed to be in business at all and Mr. Ryan had moved to Baton Rouge, Louisiana with his family.

SEVENTH: That the M.P.R. Construction Corporation, Inc. was dissolved by proclamation of the New York State Department on March 31, 1982, pursuant to Section 203A of Tax Law (Exhibit 2).

EIGHTH: That Mr. Mahshie wrote a "To Whom It May Concern" letter on behalf of his client, Nassar Ahmad Uthman, that the M.P.R. Construction Corporation, Inc. was offering employment to Mr. Uthman (Exhibit 3).

NINTH: That the Respondent admitted to the U.S. Attorney's Office that he signed Mr. Ryan's name on the aforementioned letter (Exhibit 4).

TENTH: That Mr. Ryan testified to the Federal Grand Jury that he ran the day-to-day business of the M.P.R. Construction Corporation, Inc. and did the hiring.

ELEVENTH: That Mr. Ryan further testified that he had not authorized anyone to write employment offers on behalf of M.P.R. Construction Corporation, Inc. such as the Uthman letter.

TWELFTH: That the purpose of this letter (Exhibit 3) written by Mr. Mahshie was to mislead the Immigration and Naturalization Service that Mr. Uthman had an offer of employment from the M.P.R. Construction Corporation, Inc. allowing Mr. Uthman to enter the United States based on this employment offer. Mr. Uthman did enter the United States in 1981 but there was no employment available as M.P.R. Construction Corporation, Inc. had ceased to exist.

SECOND ALLEGATION

THIRTEENTH: That Mr. Mahshie authorized and caused to be filed a Mechanic's Lien on behalf of the

M.P.R. Construction Corporation, Inc. dated January 5, 1984 (Exhibit 5).

FOURTEENTH: That in 1984, M.P.R. Construction Corporation had not been incorporated to do business in the State of New York inasmuch as the M.P.R. Construction Corporation, Inc. was dissolved by action of the New York Department of State in 1982 (Exhibit 2).

FIFTEENTH: That the Mechanic's Lien states that work was done between October 21, 1983 and March 3, 1984 in the City of Syracuse, County of Onondaga, State of New York and that the value of the labor and materials was in the amount of $5,133.

SIXTEENTH: That the labor had been performed by a party or parties unknown but not by the M.P.R. Construction Corporation, Inc.

SEVENTEENTH: That the Mechanic's Lien was purported to have been signed by William J. Ryan on June 23, 1984. Mr. Ryan's purported signature was then notarized by the Respondent, George T. Mahshie.

EIGHTEENTH: That Mr. Nicholas DeMartino made a statement to the Northern District of New York, U.S. Attorney's Office, on August 14, 1984 and stated that he had signed Mr. Ryan's name to the Mechanic's Lien at the request of Mr. Mahshie (Exhibit 6).

NINETEENTH: That Mr. DeMartino had been working for Mr. Mahshie as a law clerk for approximately five weeks when he was requested by the Respondent to sign the name of a client to a document on behalf of the client who was out of town. Mr. DeMartino signed the name of William J. Ryan.

TWENTIETH: That Mr. Mahshie notarized Mr. Ryan's signature on the Mechanic's Lien knowing said signature had been signed by Mr. DeMartino (Exhibit 5).

TWENTY-FIRST: That the misuse of the Notary Public power is a violation of the Executive Law §135 and "the party shall be guilty of a misdemeanor".

WHEREFORE, IT IS RESPECTFULLY SUBMITTED that it appears that the conduct of the subject attorney, as outlined above violated certain canons of the Code of Professional Responsibility; particularly, it is submitted that the following rules have been violated:

I. Disciplinary Rules of the Code of Professional Responsibility:

A. DR1-102A(1): A lawyer shall not violate a disciplinary rule.

B. DR1-102A(3): A lawyer shall not engage in illegal conduct involving moral turpitude.

C. DR1-102A(4): A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

D. DR1-102A(5): A lawyer shall not engage in conduct that is prejudicial to the administration of justice.

E. DR7-102A(4): In his representation of a client, a lawyer shall not knowingly use perjured testimony or false evidence.

F. DR7-102A(8): In his representation of a client a lawyer shall not knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

WHEREFORE your Petitioner respectfully submits this matter to the Court and asks that such action be taken as justice may require.

GRIEVANCE COMMITTEE OF THE FIFTH JUDICIAL DISTRICT

DAVID E. BRENNAN, Chief Attorney

Dated: November 1st, 1988
Buffalo, New York

Exhibit 1, Annexed to Petition

To the Central Trust Company Rochester N.Y.

I hereby CERTIFY that the following is a true and correct copy of resolutions duly adopted at a meeting of the Board of Directors of M.P.R. CONSTRUCTION CORPORATION a corporation, incorporated under the laws of the State of New York held at Syracuse, New York, on the 30th day of October, 1972 a quorum then being present; that said resolutions are still in full force and effect and are in accordance with the Certificate of Incorporation and By-Laws of the corporation:

RESOLVED, that an account be opened with, and the funds of this corporation deposited in, the CENTRAL TRUST COMPANY ROCHESTER, N.Y., subject to withdrawal upon the check, draft, note, order or acceptance of this corporation, signed by any one of the following three officers or employees:

Name	Title	Signature
George T. Mahshie	President	
William J. Ryan	Vice Pres.-Treas.	
Catherine Bowka	Secretary	

and the said bank is hereby authorized to pay such checks, drafts, notes, orders or acceptance and also to receive the same for the credit of or in payment from the payee or any other holder when so signed, without inquiry as to the circumstances of their issue or the disposition of their proceeds, whether drawn to the individual order of, or tendered in payment of individual obligations of, any of the officers or employees above named, or other officers or employees of this corporation, or otherwise. It is agreed that all transactions between the bank and the corporation shall be governed by the contract printed on the reverse side of this resolution.

RESOLVED, That endorsements on behalf of this corporation upon any and all checks, drafts, notes, and other instruments of every kind deposited by or on behalf of this corporation with said bank for credit or collection or otherwise, may be made by any one of the said officers or their successors or by hand stamp impression in the name of this corporation.

RESOLVED, that two of the following three officers or employees:

Name	Title	Signature
George T. Mahshie	President	
William J. Ryan	Vice President	
Catherine Bowka	Secretary	

be and they hereby are, authorized, in behalf of this corporation, from time to time, to borrow money from the CENTRAL TRUST COMPANY ROCHESTER N.Y., and to make and deliver notes and other obligations of this corporation in form required by the CENTRAL TRUST COMPANY ROCHESTER N.Y., for the payment of any sum so borrowed; also, to pledge any of the bonds, stocks, bills receivable, or any other security and/or property of this corporation as collateral therefor, with full authority to endorse or guarantee the same in the name of this corporation, to execute and deliver all instruments of assignment and transfer and to affix the corporate seal, and to discount or rediscount any bills receivable held by this corporation at any time, rendering the same negotiable by endorsement: hereby authorizing the said CENTRAL TRUST COMPANY ROCHESTER N.Y. to charge the same to the account of this corporation, before, at or after maturity thereof.

RESOLVED, that the loans and discounts heretofore effected and at present outstanding with said bank, and endorsements, guarantees and powers of attorney made and issued in connection therewith, be and they hereby are ratified and confirmed.

RESOLVED, that the foregoing powers and authority shall continue until written notices of the revocation thereof has been received by said bank.

RESOLVED, that these authorizations are to cover all accounts of this corporation in the CENTRAL TRUST COMPANY ROCHESTER, N.Y. unless said bank shall have received written notice to the contrary.

I further certify that the above persons have been elected, have qualified and are now acting as officers of this Corporation, in the capacities set opposite their respective names and that the signatures set opposite such names are their signatures.

WITNESS my hand and the seal of the corporation this day of November 1972

(Corporate Seal) Catherine Bowka, Secretary

Exhibit 2, Annexed to Petition

State of New York)
) ss:
DEPARTMENT OF STATE)

It is Hereby Certified, *That* the records of this Department show that M.P.R. CONSTRUCTION CORPORATION the certificate of Incorporation of which was filed on the 22nd day of July, 1968, , was dissolved by proclamation of the Secretary of State published on the 31st day of March, 1982, pursuant to Section 203-A of the Tax Law and that such dissolution has not been annulled.

Witness my hand and the official seal of the Department of State at the City of Albany, this 20th day of July one thousand nine hundred and eighty-four.

Gail S. Shaffer
Secretary of State

Exhibit 3, Annexed to Petition

Exhibit "A"

RE: NASSER AHMAD UTHMAN
118 Davis Street
Syracuse, New York 13204

To Whom It May Concern:

We wish to advise that we are prepared to offer the above-named a position with our company. His position will be that of general laborer; his wages will be $4.65/ hour; his schedule will be a 40-hour work week; union pension, health and accident insurance; he will receive all legal holidays in addition to two-weeks paid vacation at the end of the first year of employment.

We are prepared to have Mr. Uthman commence work as soon as he is prepared to submit to a physical examination and to fill in all of the necessary and required application forms with our company.

In view of the fact that this is permanent employment, we do look forward to a long and pleasant relationship with Mr. Uthman.

In the event that we may be of any further service, kindly advise.

Very truly, yours

William J. Ryan
Vice President

Exhibit 4, Annexed to Petition

AFFIDAVIT

STATE OF NEW YORK :
: ss.
COUNTY OF ONONDAGA :

GEORGE MAHSHIE, being duly sworn according to law, deposes and says:

1. I signed the name "William J. Ryan" on an undated letter re: Nasser Ahman Uthman directed "To Whom It May Concern" on letterhead of mpr Construction Corporation, a copy of which letter is attached to this affidavit and marked as Exhibit "A".

GEORGE MAHSHIE

Sworn and subscribed to
before me this 7th day
of March, 1988

JOHN L. DELVECCHIO
Notary Public

Exhibit 5, Annexed to Petition

Notice of Mechanic's Lien on Real Prop. To be filed with County Clerk.

Individual. Partnership or Corp. 2-81

NOTICE UNDER MECHANIC'S LIEN LAW

To the Clerk of the County of Onondaga and all others whom it may concern

PLEASE TAKE NOTICE, that M.P.R. Construction Co., Inc. as lienor(s) have and claim a lien on the real property hereinafter described as follows:

(1.) The names and residences of the lienors are 505 East Washington Street, Syracuse, New York being (a corporation) composed of whose business address is at 505 East Washington Street, Syracuse, N.Y. and whose principal place of business is at 505 East Washington Street, Syracuse, N.Y.

(1a.) The name and address of lienor's attorney, if any George T. Mahshie, Esq. Suite 205, 731 James St., Syracuse, N.Y.

(2.) The owner of the real property is Issa and Yvonne Majlaton and the interest of the owner as far as known to the lienor(s) is owners-in-fee.

(3.) The name of the person by whom the lienor(s) was employed is Issa Majlaton. The name of the person to whom the lienor(s) furnished or is (to furnish materials or for whom the (ILLEGIBLE) performed or is to perform professional services is Issa and Yvonne Majlaton. The

name of the person with whom the contract was made is Issa and Yvonne Majlaton. The name of the person for whom professional services were rendered is Issa and Yvonne Majlaton.

(4.) The labor performed was carpentry, electrical, flooring, and partial. The material furnished was lumber, nails, electrical fixtures, boxes, and shingles. The materials actually manufactured for but not delivered to the real property are none. The agreed price and value of the labor performed and materials is $5133.00

Total agreed price and va (ILLEGIBLE).

(5.) The amount unpaid to the lienor(s) for said labor performed and material is $5133.00. The amount unpaid to the lienor(s) for said material furnished is $5133.00.

Total amount un (ILLEGIBLE).

The total amount claimed for which this lien is filed is $5133.00

(6.) The time when the first items of work was performed was October 21. The time when the first item of material was furnished was October 21. The time when the last item of work was performed was January 3. The time when the last item of material was furnished was January 3.

(7.) The property subject to the lien is situated in City of Syracuse, County of State of New York

(SEE ATTACHED DESCRIPTION)

That said labor and materials were performed and furnished for and used, and that the professional service

improvement of the real property hereinbefore described. That 4 months have not elapsed dating from (ILLEGIBLE) from the last items of materials furnished, or since the completion of the contract, or since the final perf (ILLIGIBLE) final furnishing of the materials for which this lien is claimed.

WILLIAM J. RYAN
Vice President

Dated January 5, 1984

SEAL

Exhibit 6, Annexed to Petition

State of New York)
) ss.:
County of Onondaga)

GOVERNMENT
EXHIBIT

I began working for attorney George Mahshie as a clerk on or about December 14, 1984. On one occasion, during the second or early during the third week in January, 1984, he called me into his office and asked me to show him what my signature looked like. After writing my name on a piece of scrap paper, he said that "my client is out of town," and pointed to a document on his desk which he had prepared. He then told me to "sign for him." I hesitated for a moment and looked at Mr. Mahshie who then said words to the effect of "don't worry about it, it's alright to sign." I then signed for the client, believing that I had authorization from that client to do so. That was the last time I saw the said document. It did not register in my mind who the client was or the type of document that Mr. Mahshie had prepared, although I did remember that it was some type of lien.

Shortly after speaking with investigators Bill Devine and Bruce McDonald of the Immigration and Naturalization Service (July 18, 1984) regarding their investigation of Mr. Mahshie, I recalled the above incident. I went to the Onondaga County Clerk's Office and began looking through the Mechanic's Lien Index in an effort to find this document. I eventually found a Mechanic's Lien which was filed by Mr. Mahshie on January 25, 1984, and which is located in Book # 8, Page 251 of the Mechanic's Lien Index. The Lienor is MPR Construction Corporation, and is signed by William Ryan. I believe that this is the document referred to above.

At the time I had signed for Mr. Mahshie's client, I did so believing it was Mr. Mahshie's client and believing that I had authorization to do so from that client. At that time also, I had no knowledge of the MPR Construction Corporation, nor of its operations, nor of Mr. Ryan, nor of the non-existence of that company. At no time did I ever intend to defraud anyone, nor did I ever intend or expect to benefit from this action in any way, nor have I benefited from this action in any way. I subscribe and affirm the following to be true under the penalties of perjury.

Nicholas DeMartino
2/7/86

Sworn to me this
14th day of August, 1984
Denise J. Roser
Notary Public

(ILLIGIBLE)